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C O N F I D E N T I A L SECTION 01 OF 03 MADRID 000137

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SP

SUBJECT: SPAIN: CHARGE DISCUSSES IPR, RELIGIOUS FREEDOM,
TIP, AND THE CARRASCOSA CASE WITH DEPUTY JUSTICE MINISTER

REF: A. 2006 MADRID 2241

[1](#)B. 2007 MADRID 2093

Classified By: CDA Hugo Llorens for Reasons 1.4 (b) and (d)

[1](#)1. (C) In a February 7 meeting with Spanish Secretary of State for Justice Julio Perez-Hernandez (Deputy Justice Minister equivalent) that focused primarily on our pending request to extradite alleged Syrian arms dealer Monzer Al-Kassar (SEPTTEL), the Charge also raised USG concerns on intellectual property rights, religious freedom, and trafficking in persons. The meeting concluded with a discussion of the ongoing Carrascosa child abduction case and the latest changes to our Visa Waiver Program. Perez-Hernandez is a straight shooter and a good contact of this Embassy, and he endeavored to get back to us quickly with responses to our requests. He also thanked us in advance for any additional information we could provide on the Carrascosa case.

//INTELLECTUAL PROPERTY RIGHTS//

[1](#)2. (C) The Charge noted that while we usually discuss IPR issues with the Spanish Ministries of Industry and Culture, we wanted to provide him with a letter outlining USG concerns with a May 2006 "Circular" issued by the Spanish Attorney General to Spanish prosecutors informing them that downloading or uploading using peer-to-peer file sharing systems is not subject to criminal prosecution unless there is a commercial profit motive, even though it may be illegal from a civil law standpoint. The Charge said we understand that GOS officials have in the past said that this does not mean it considers this type of file sharing legal, but the reality was that as a result of the Circular, Internet users' associations and others believed the GOS permits this file sharing. The Charge noted that this has upset Spanish and American industry groups, given the large amount of intellectual property stolen over the Internet, and asked the Deputy Justice Minister for his Ministry's assistance in changing the perspective in Spain that this type of file sharing is a benign activity. Perez-Hernandez seemed to be genuinely unaware of the existence of this Circular and maintained that Spain was absolutely committed to protecting IPR, and in fact had rather stringent laws on its books to

punish IPR theft. He noted that this Circular was almost two years old and that it was very possible that it was no longer in effect. He endeavored to dig deeper into this issue and to respond in writing to the Embassy with the MOJ response by February 21.

//RELIGIOUS FREEDOM//

13. (C) The Charge then laid out ongoing U.S. concerns with religious freedom in Spain and urged the next Spanish government (due to be seated around the middle of April after Spain's March 9 national elections) to move quickly to amend the Law on Patronage (ley de mecenazgo) and the Royal Decree, which establish formal relationships between the Spanish state and Spain's four major religious denominations (REFTEL A). This would allow Mormons, Jehovah's Witnesses, Buddhists, and other faiths that have "notorio arraigo" (deeply rooted) status in Spain to share the same benefits and privileges that Catholics, Protestants, and Muslims currently enjoy. The Charge emphasized that the USG viewed this issue as a matter of religious freedom. Secretary Perez-Hernandez yielded the floor to Mercedes Rico, MOJ Director General of Religious Affairs, who said that although it may not look from the outside as if the GOS has made much progress on this issue, in fact they had. Rico noted the difficulty of changing Spanish law on this issue, but the fact that notorio arraigo had been granted to Mormons in 2003, Jehovah's Witnesses in 2006, and Buddhists in 2007, showed clear progress on the part of the Spanish government. Rico confirmed that amending the Law on Patronage would in fact be a top priority of the new Spanish legislature, as the GOS believed that all faiths with notorio arraigo deserved access to the same financial benefits. Rico then said she wanted to speak frankly, and blamed the Spanish Ministry of Hacienda (Treasury) for dragging its feet on awarding the

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other faiths access to financial benefits. Rico said that Hacienda's policy had been to say "No" to everything, which has stalled the issue. The Charge then said that the Embassy could reach out to either the Treasury State Secretary or Secretary General to push our concerns. Both Rico and

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Perez-Hernandez said that might be a good idea, but asked that we wait until the MOJ presents an official "legislative project" on this issue early in the new legislature.

//TRAFFICKING IN PERSONS//

14. (C) The discussion then turned to human trafficking as the Charge emphasized the high-level U.S. interest in this topic and inquired about the status of Spain's national action plan to combat TIP. The Charge told Perez-Hernandez that Spain had always been ranked in Tier 1 as a recognition that Spain was making strong efforts to fight this social scourge, but that the Department looks for countries to show progress each year to maintain its top ranking. He said we understood the Spanish government had been drafting its national action plan for some time and wondered when it might officially be approved. Perez-Hernandez replied that this plan was under the auspices of first Vice President Fernandez de la Vega and he promised to contact the VP's office to obtain an update on the current status of the plan. He reiterated that Spain took the fight against TIP seriously and had made great strides in recent years on the law enforcement and judicial fronts. He said he wanted to do what he could to ensure Washington was aware of the strong efforts Spain was making.

15. (C) Separately, Embassy Madrid's Political Counselor met February 7 with Irune Aguirrezabal, senior advisor on human trafficking in the office of the Spanish Vice President. She said that having Spain's national action plan approved by the Council of Ministers and put into effect was a priority for the government. However, she noted that approval was unlikely to happen before Spain's March 9 general election.

Aguirrezabal said the plan's rollout has been delayed due to the need to thoroughly vet the plan and consult within the government and with Spain's civil society. She said the GOS opted for a well-crafted plan with institutional buy-in rather than something that fell short of that goal. The GOS has noted recent OSCE interest in their national anti-TIP plan and will submit the plan to that international body for their review and comment. She believes the OSCE will review the plan in April or May and that approval by the Council of Ministers will come in June or July. She added that this particular national plan deals with trafficking for sexual exploitation. The GOS is working on a separate national action plan to combat trafficking for the purposes of forced labor.

//THE CARRASCOSA CASE//

16. (C) As we have reported extensively (most recently in REFTEL B), the long-running case of Maria Jose Carrascosa, a Spanish attorney from Valencia held in a New Jersey prison since November 2006 for contempt of court after failing to produce her daughter before a New Jersey court, has received a lot of sensational press based on pictures of "a mother in chains," and has been a high priority for a Spanish government wanting to be seen doing everything it can to defend its citizens abroad. We continue to stress that this is the tragic example of the breakup of a family, and a matter for the U.S. courts over which we have no jurisdiction or influence. We have always stressed the need for Carrascosa and her ex-husband, Peter Innes, to come to a settlement and do what is in the best interests of their young daughter Victoria. The Charge also told Perez-Hernandez that he felt compelled to reiterate our view that Ms. Carrascosa has been and continues to be intransigent and uncompromising, and has yet to respond to a (in our view) sensible settlement offer from Innes that would allow for Victoria to remain in Spain, while visiting her father in the U.S. during summers and alternate holidays. Perez-Hernandez agreed that Ms. Carrascosa has been unreasonable in not responding to her former husband's settlement offer. The Charge and Perez-Hernandez discussed the fact that the window for a settlement is drawing to a close, as Carrascosa is

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expected to go on trial in a New Jersey court on February 19 on state charges of kidnapping. If convicted, she potentially could spend a long time in jail. The Charge mentioned the work of Consular Affairs' Office of Children's Issues, who has proposed that the relevant judges and attorneys meet in the Hague to try and reach an agreement. We believe this is an effort worth pursuing with great vigor, and it would be good to have in attendance both the New Jersey state judge involved in the case (whom we have heard is positively predisposed to the idea), as well as the federal judge hearing the Habeas Corpus case.

17. (C) Perez-Hernandez reiterated to the Charge that this case is of utmost interest to the Spanish government, and admitted that much of the Spanish population is emotionally involved in this case due to the pictures of Carrascosa in an orange prison jumpsuit, shackled at the wrists and ankles. He says these pictures and the case itself have damaged the U.S. image in the eyes of many Spaniards. He said that Spanish law does not have the equivalent of a "contempt of court" violation and that many Spanish citizens do not understand how Carrascosa can be subject to an indefinite prison sentence until, in his words, "this particular judge in New Jersey determines that she has obeyed his judicial ruling." Perez-Hernandez said that there should be some end in sight to the prison sentence, and said only half-jokingly that perhaps it was best for her to be tried and convicted on the kidnapping charges, because at least then, "she would know how long she had to remain in prison before being released." The Charge and Perez-Hernandez both added that they hope this case does not come to that, and agreed to stay in contact and make sure each remained up to speed on the

latest developments in the case.

18. (U) The meeting ended with a short discussion of the new aspects of the Visa Waiver Program, and the Charge said that as soon as we received the MOU from the Department of Homeland Security we would share it with the Spanish. As the Spanish Embassy in Washington should have already received a copy, we said it was quite possible the MOJ would hear about it through their own channels. The Charge stressed that Spain already met most, if not all, of the new requirements and thus would not be greatly affected by the changes.
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